Attorney-General, *supra*. Or he may appear of his own accord as an intervening party. *Florida* v. *Georgia*, 17 How. (U. S.) 478; *Perkins* v. *Bradley*, 1 Hare, 219. The point seems well settled, but apparently it is not as well known as its utility would merit.

SPECIFIC PERFORMANCE — DEFENSES — LACK OF MUTUALITY OF REMEDY. — The assignee of the vendee of a contract for the sale of land brings a bill against the vendor for specific performance, offering at the same time to carry out all of the vendee's obligations. *Held*, that specific performance be denied for lack of mutuality of obligation and remedy. *Schuyler* v. *Kirk-Brown Realty Co.*, 184 N. Y. Supp. 95.

This case demonstrates the unfortunate results of a literal application of the doctrine of the lack of mutuality of remedy. The rule is well settled in most jurisdictions that the assignee of the vendee may have specific performance against the vendor. *Lenman* v. *Jones*, 222 U. S. 51; *Miller* v. *Whittier*, 32 Me. 203. And, indeed, a like result has been achieved, at times, in New York. *Dodge* v. *Miller*, 81 Hun, 102, 30 N. Y. Supp. 726. In the main, however, the New York courts have applied the "mutuality" formula in its most exaggerated form, to wit: that if the contract cannot be specifically enforced for any reason against one of the parties, then, and for that reason alone, he is not entitled to the remedy of specific performance against his adversary. See *Wadick* v. *Mace*, 191 N. Y. 1, 4, 83 N. E. 571, 572. See 16 COL. L. REV. 443. Such use of the rule has been frequently criticized. 20 HARV. L. REV. 57; 3 COL. L. REV. 1. It is regrettable that a court which recognizes mutuality of performance, as distinguished from mutuality of remedy, as possibly the more desirable conception, should refuse to apply it. In the principal case, mutuality of performance could be secured to the vendor, as had been properly done in the lower court, by a decree conditioned upon performance by the vendee or his assignee. See 33 HARV. L. REV. 955.

STATUTE OF FRAUDS — SUFFICIENT MEMORANDUM — TERMS SET FORTH IN PLEADING SIGNED BY COUNSEL — PRIOR VERBAL CONTRACT WITH ANOTHER PARTY. — The plaintiff sued for specific performance of a written agreement to sell a house to him. The defendant pleaded a prior agreement to sell the house to a third person, and set forth the terms of the agreement in the pleading, which was signed, as usual, by his counsel. There was no other memorandum of this first contract sufficient to satisfy the Statute of Frauds. *Held*, that specific performance be denied. *Grindell* v. *Bass*, [1920] 2 Ch. 487.

Under the Statute of Frauds only the "party to be charged" need sign a "note or memorandum" of the contract. A writing signed by the vendor is sufficient to support a suit by the vendee. *Fowle* v. *Freeman*, 9 Ves. Jr. 351; *Justice* v. *Lang*, 42 N. Y. 493. It is not necessary that the agent who signs the memorandum be authorized to make a note of the agreement; it is sufficient that he had authority to sign the paper in which its terms are set forth. *Cycle Corp.* v. *Humber*, [1899] 2 Q. B. 414. Nor is it necessary that there be an intent to make a binding memorandum. *Daniels* v. *Trefusis*, [1914] 1 Ch. 788; *Beckwith* v. *Clark*, 188 Fed. 171 (C. C. A.). The pleading was therefore a memorandum sufficient to bind the defendant in a suit by the third person. Both purchasers have valid contracts evidenced by sufficient writings. The purpose of denying specific performance must be to protect, not the defendant, but the prior purchaser. If in such a situation either party secured a conveyance, the legal title thus vested would prevail. *Emery* v. *Boston Terminal Co.*, 178 Mass. 172, 59 N. E. 763; *Maguire* v. *Heraty*, 163 Pa. 381, 30 Atl. 151. Here, however, neither has legal title, and it is proper that the prior equity should prevail. And since the writing is only evidential of the contract,

in determining priority it is proper that the time of the contract, not of the writing, should govern.

TORTS — UNUSUAL CASES OF TORT LIABILITY — MENTAL ANGUISH CAUSED BY PRACTICAL JOKE — DAMAGES. — A tradition in the plaintiff's family concerned an ancestral pot of gold buried in the neighborhood. On the basis of a map, shown her by a fortune teller, the plaintiff commenced to dig for treasure. As a practical joke the defendants hid a sealed pail, filled with dirt, in a place where the plaintiff must naturally unearth it. She found the pail, and, in accordance with its accompanying directions, solemnly opened it in the presence of all the heirs. She now sues for financial outlay and mental anguish over disappointed hopes. The plaintiff having died *pendente lite*, her heirs continue the suit. *Held*, that the heirs may recover $500. *Nickerson* v. *Hodges*, 84 So. 37 (La.).

Society gives a license to enjoy the free exercise of one's faculties. See Roscoe Pound, "Interests of Personality," 28 HARV. L. REV. 343, 361. But it is generally admitted that individuals will not be secured in freely exercising their faculties for the purpose of injuring others. *Wilkinson* v. *Downton*, [1897] 2 Q. B. 57; *Janvier* v. *Sweeney and Barker*, [1919] 2 K. B. 316; see 28 HARV. L. REV. 343, 362. By exceeding this social license in their practical joking the defendants above doubtless gave to the plaintiff, had she survived, a valid right of action against them. By the Code the plaintiff's heirs succeed to the plaintiff's right. LA. R. C. C., Art. 2315. The court says: "If Miss Nickerson were still living, we should be disposed to award her damages in a substantial sum." But, as to her heirs, "a judgment of $500 will reasonably serve the ends of justice." A Midsummer Night's prank does not call for Midsummer Night's justice. By law the heirs, as legal successors to the deceased, must be entitled to all the "substantial sum" or nothing. They might well protest this judgment as the true mother protested when Solomon would have halved the baby between the disputing harlots.

TRESPASS TO REALTY — CONTINUOUS TRESPASS — LIMITATION OF ACTION. — In 1912 defendant county seized a strip of plaintiff's land, without color of right, and built a highway. In 1920, as a defense against an action of trespass *quare clausum fregit*, defendant pleaded the statute of limitations. The court charged that the plaintiff could recover, without first retaking possession, and that the statute was not a bar to a recovery of damages for the last six years of occupation. *Held*, that the charge was correct. *Morey* v. *Essex County*, 110 Atl. 905 (N. J.).

When a trespass on realty is a completed act the cause of action accrues and the statute of limitations runs from that moment. *Kansas Pacific Ry.* v. *Mihlman*, 17 Kan. 224. And consequential damage occurring later cannot turn it into a continuing trespass. *Louisville Ry.* v. *Wiggington*, 156 Ky. 400, 161 S. W. 209. But when the trespass is a continuing injury to possession the statute runs afresh from each day's wrong. See *Milton* v. *Puffer*, 207 Mass. 416. The court here treats the plaintiff as having lost possession by the seizure. If so, there could be no continuing injury to his possession. But the result reached seems correct because defendant, appropriating at most a right of way, did not really gain possession. Some states treat such an appropriation as a completed trespass, because it makes a permanent alteration in plaintiff's land. *Adams* v. *Macon Ry.*, 141 Ga. 701, 81 S. E. 1110. But the use of an assumed right of way is in its nature a continuing wrong, and the weight of authority agrees with the decision. *Building Company* v. *Chicago*, 207 Ill. App. 244; *Carl* v. *Sheboygan Rd.*, 46 Wis. 625, 1 N. W. 295.